

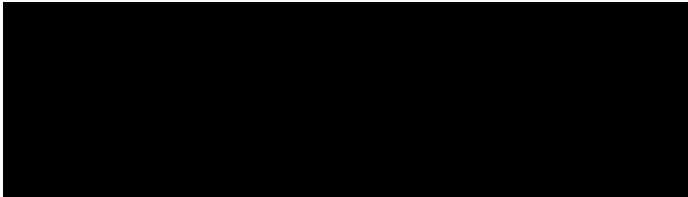
PUBLIC COPY

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Mass. Rm. A3042, 425 I Street, N.W.
Washington, DC 20536

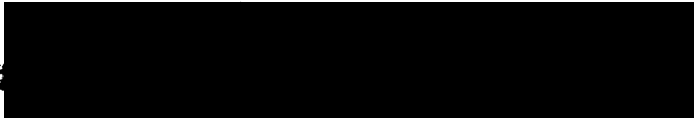


U.S. Citizenship
and Immigration
Services



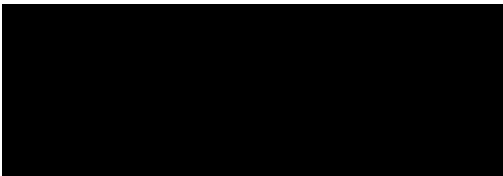
FILE: LIN 03 048 53563 Office: NEBRASKA SERVICE CENTER Date: APR 28 2004

IN RE: Petitioner:
Beneficiary:



PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Mari Johnson

for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner operates an early childhood educational facility, and seeks to employ the beneficiary as an accountant/assistant to the director. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition because the proffered position is not a specialty occupation. On appeal, counsel submits a brief and additional information.

The issue to be discussed in this proceeding is whether the position offered to the beneficiary qualifies as a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

Section 214(i)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184 (i)(1), defines the term "specialty occupation" as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

[A]n occupation which requires theoretical and practical application of a body of highly specialized knowledge in field of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must meet one of the following criteria:

1. A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
2. The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
3. The employer normally requires a degree or its equivalent for the position; or

4. The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

Citizenship and Immigration Services (CIS) interprets the term “degree” in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

The record of proceedings before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director’s request for additional evidence; (3) the petitioner’s response to the director’s request; (4) the director’s denial letter; and (5) the Form I-290B with counsel’s brief. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary’s services as an accounting clerk. Evidence of the beneficiary’s duties includes the I-129 petition with attachment, and the petitioner’s response to the director’s request for evidence. According to the evidence, the beneficiary would: handle all accounting functions such as daily recording, bookkeeping, and general accounting; manage day-to-day financial activities; assist the director with the planning and expansion of the academy; maintain accounting control measures; prepare reports; audit contracts; monitor supply orders and vouchers; purchase equipment and supplies; negotiate contracts with vendors; set up an internal accounting system; work with the financial director in preparing the budget, financial reports, and payroll/withholding taxes; implement a computer based general accounting procedure; develop business relationships within the community; assist with funding and land acquisition for future expansion; recommend accounting methods for the amortization and depreciation of buildings and equipment; and make recommendations to the Board of Directors and senior management on financial matters and accounting procedures. The petitioner requires a bachelor of science degree in business administration, with a major in accounting, for entry into the proffered position.

The director found that the offered position did not qualify as a specialty occupation and failed to meet any of the criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel submits a brief stating that the proffered position qualifies as a specialty occupation as it meets the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

Upon review of the record, the petitioner has failed to establish that the proffered position meets any of the criteria set forth in 8 C.F.R. § 214.2(h)(4)(iii)(A). The AAO routinely consults the *Handbook* for information about the duties and educational requirements of particular occupations. The duties of the proffered position are varied, but essentially those noted for bookkeepers, accounting or financial clerks. In the *Occupational Outlook Handbook*, 2002-03, (*Handbook*) at 387-390, the Department of Labor describes, in part, those duties as follows:

Bookkeeping, accounting, and auditing clerks are an organization’s financial record keepers. They update and maintain one or more accounting records, including those that tabulate expenditures, receipts, accounts payable and receivable, and profit and loss. . . . In small establishments, bookkeeping clerks . . . post debits and credits, produce financial statements, and prepare reports and summaries for supervisors and managers.

....

More advanced accounting clerks total, balance and reconcile billing vouchers, ensure

completeness and accuracy of data on accounts, . . . [and] review invoices and statements to ensure that all information is accurate and complete

Financial clerks . . . record all amounts coming into or leaving an organization. . . . Other clerks keep track of a store's inventory

. . . .

The duties of financial clerks vary with the size of the firm. In a small business, a bookkeeper may handle all financial records and transactions, as well as payroll and billing duties.

The *Handbook* notes that the majority of financial clerk positions require at least a high school diploma, but some college is becoming increasingly important for occupations requiring knowledge of accounting. An associate degree in business or accounting is often required for accounting and procurement clerks, as well as occupations in bookkeeping. Thus, the petitioner has failed to establish that a baccalaureate or higher degree is normally the minimum requirement for entry into the offered position. 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The job description provided by the petitioner does not indicate that the duties of the position are so complex or unique that they can be performed only by an individual with a degree in a specific specialty, or that they are so specialized or complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) and (4). The duties related to accounting functions are routinely performed by accounting/financial clerks and bookkeepers. The performance of those duties does not require the theoretical and practical application of a body of highly specialized knowledge, as noted by the educational requirements in the *Handbook*. Likewise, the remaining duties listed for the offered position involve general administrative or managerial functions that do not normally require a minimum of a bachelors' degree in a specific specialty for their performance.

Finally, the petitioner has not established that it normally requires a degree or its equivalent for the proffered position, and offers no evidence in this regard. 8 C.F.R. § 214.2(h)(4)(iii)(A)(3). Assuming arguendo that this were the case, the proffered position still does not qualify as a specialty occupation. The performance of the duties of the position must still involve the theoretical and practical application of a body of highly specialized knowledge. *Defensor v. Meissner*, 201 F.3d 388 (5th Cir. 2000). This position does not. As noted above, the duties of the position are routinely performed in the industry by individuals with less than a baccalaureate level education.

The petitioner has failed to establish that the offered position meets any of the criteria listed at 8 C.F.R. § 214.2(h)(4)(iii)(A). Accordingly, the AAO shall not disturb the director's denial of the petition.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden and the appeal shall accordingly be dismissed.

ORDER: The appeal is dismissed. The petition is denied.